

FILED ENTERED
LODGED RECEIVED

SEP 28 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

THE HONORABLE THOMAS S. ZILLY



10-CV-01253-DECL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT, a Washington
non-profit corporation,

Plaintiff,

v.

PSF MECHANICAL, INC., a Washington
corporation,

Defendant.

Case No. 10-1253-TSZ

CONSENT DECREE

I. STIPULATIONS

Plaintiff Waste Action Project filed a complaint against Defendant PSF Mechanical Inc. on August 4, 2010 alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from PSF's Facility in Seattle, Washington and seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs.

PSF denies any fault, wrongdoing, or liability regarding all claims and alleged violations.

Waste Action Project and PSF agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

Waste Action Project and PSF stipulate to the entry of this Consent Decree without trial,

CONSENT DECREE: 10-1253-TSZ - 1

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

adjudication, or admission of any issues of fact or law regarding Waste Action Project's claims or allegations set forth in its complaint and its sixty-day notice.

DATED this 25th AUGUST day of July, 2011.

HILLIS CLARK MARTIN & PETERSON P.S. SMITH & LOWNEY

By [Signature]
George A. Kresovich, WSBA #8017
Amit D. Ranade, WSBA #34878
Attorneys for Defendant
PSF Mechanical, Inc.

By [Signature]
Richard A. Smith, WSBA #21788
Attorneys for Plaintiff
Waste Action Project

PSF MECHANICAL, INC.

WASTE ACTION PROJECT

By [Signature]
Warren Beardsley
Chairman

By [Signature]
Greg Wingard
Title: Executive Director

II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing Stipulations of the parties, and the letter dated September 13, 2011, from Thomas W. Smeagle, Jr., Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This court has jurisdiction over the parties and subject matter of this action.
2. Each signator for the parties certifies for that party that he or she is authorized to enter into the agreements set forth below.
3. This Consent Decree applies to and binds the parties and their successors and assigns.
4. This Consent Decree applies to the operation, oversight, or both by Defendant PSF Mechanical, Inc. of its Facility at 9322 14th Avenue South, Washington (the "Facility").
5. This Consent Decree is a full and complete settlement of the claims in the complaint and all other claims known and unknown existing as of the date of entry of this Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,

CONSENT DECREE: 10-1253-TSZ - 2

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2926
Telephone: (206) 629-1745
Facsimile: (206) 629-7789

13, 2011, from
Thomas W. Smeagle,
Jr.,
Locket no. 13,

TSZ

1 arising from operations of the Facility. These claims are released and dismissed with prejudice.
2 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its
3 terms.

4 6. This Consent Decree is a settlement of disputed facts and law. It is not an
5 admission or adjudication regarding any allegations by Waste Action Project in this case or of any
6 fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or
7 misconduct on the part of PSF.

8 7. PSF agrees to the following terms and conditions in full and complete satisfaction
9 of the claims covered by this decree:

10 a. PSF will comply fully with all conditions of its National Pollutant
11 Discharge Elimination System Permit No. SO30000246 (the "*NPDES permit*") and any
12 successor, modified, or replacement permit;

13 b. Not later than June 1, 2011, PSF will submit a complete request for
14 modification of coverage per Conditions S2.B. and S8.D.4. of the NPDES permit to seek
15 Ecology approval of a waiver of and additional time for completion of PSF's Level 3
16 response and required treatment best management practices to allow PSF to address zinc
17 benchmark exceedences in the manner described by the terms of this Consent Decree. If
18 Ecology denies the waiver and request for additional time, PSF will install a water quality
19 treatment system as soon as practical after that denial.

20 c. PSF will implement the following best management practices as soon as
21 possible and not later than June 1, 2011:

22 1) sweep the Facility's outdoor paved ground surfaces with a vacuum
23 sweeper truck at least once a week;

24 2) improve housekeeping practices and rain-protection structures to
25 minimize exposure of zinc-containing materials, products, wastes, and equipment
26 to rain, including wind-blown water, and runoff and run on, including during

1 loading and unloading operations; and

2 3) any other best management practices that PSF believes will help
3 minimize the exposure of potential sources of zinc to stormwater.

4 d. PSF will install an air filtration system at the plasma cutter in the building
5 where production activities take place at the Facility that will eliminate venting of its
6 exhaust fan outside of that building. This will be done as soon as reasonably possible but,
7 in any case, no later than September 1, 2011.

8 e. PSF will immediately start planning to eliminate all exposure of
9 materials, products, wastes, and equipment at the Facility with the goal of qualifying for a
10 "no exposure" exemption from NPDES permit coverage pursuant to Condition S1.F of the
11 permit and 40 CFR § 122.26(g) not later than February 28, 2012. These measures may
12 include the construction of new buildings or other structures and will include the timely
13 application for any necessary governmental permits or approvals needed to build such
14 structures. If PSF determines that it is not reasonably possible to qualify for a no exposure
15 exemption from the NPDES permit, it will install stormwater treatment systems designed
16 to reduce zinc levels in its storm water discharge below benchmark levels and will do so
17 no later than February 28, 2012.

18 f. PSF will collect grab samples of stormwater representative of
19 Facility discharges from the location where it monitors for permit compliance on no less
20 than twelve days between June 1, 2011, and February 10, 2012. No more than two
21 samples will be taken in any week. If there are not a sufficient number of qualifying
22 events for PSF to take twelve grab samples after the installation of the air filtration system
23 described in subparagraph 7(d) above before February 10, 2012, PSF will continue to take
24 grab samples, as provided for in this subparagraph, until it has taken twelve such samples.
25 These samples will be analyzed for zinc concentration as required by the permit. If two or
26 more samples taken after June 1, 2011 exceed the permit's zinc concentration benchmark

1 of 117 ug/L, PSF will take one of the actions set forth below.

2 1) PSF will implement its plans to eliminate stormwater exposure, as
3 described in subparagraph 7.d above and submit an application for "no exposure"
4 status to the Washington State Department of Ecology by February 28, 2012. PSF
5 will implement any Facility change or operational modification required by
6 Ecology for approval of "no exposure" status on the most expeditious schedule
7 practicable. If Ecology grants "no exposure" status and cancels PSF's permit
8 coverage, PSF will maintain and operate the Facility in compliance with the
9 conditions for "no exposure" status.

10 2) If it is not practical to achieve "no exposure" status, PSF will install a
11 stormwater treatment system designed to reduce the levels of zinc in its stormwater
12 below benchmark standards. PSF will complete this installation by February 28,
13 2012.

14 g. Waste Action Project's representatives will have reasonable access to the
15 site to inspect stormwater management practices and to assess PSF's compliance with this
16 Consent Decree.

17 h. PSF will forward copies of all written or electronic communications
18 between it and Ecology concerning its compliance with the NPDES permit and the Clean
19 Water Act, including but not limited to discharge monitoring reports to Waste Action
20 Project on or before the end of each calendar quarter. This obligation will continue
21 through the termination date of this Consent Decree.

22 8. PSF will pay a total of \$48,000 in three equal annual payments of \$16,000
23 to the United States Treasury. The first payment is due and payable within 30 days after the entry
24 of this Decree; the second installment is due and payable within one year of the entry of this
25 Decree; and the third installment is due and payable within two years of the entry of this Decree.
26 Checks shall be made to the order of the United States Treasury. Payment shall be sent to *as follows.*

CONSENT DECREE: 10-1253-TSZ - 5

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

If
 payments are made by U.S. Mail, PSF shall address these payments to Ms. Sandra Doyle,
 U.S. Department of Justice-ENRD, Executive Office, Ben Franklin Station, P.O. Box 7754,
 1 Washington DC 20044-7754. If payments are sent by overnight delivery, PSF shall send these
 payments to Ms. Sandra Doyle, U.S. Department of Justice-ENRD, Executive Office, 601 D
 2 Street NW, Room 2926, Washington DC 20004.

3 Payment shall include the following reference in a cover letter or on the check:
 4 "Consent Decree, WAP v. PSF Mechanical, Inc., W.D.Wash. Civ. Case No. 10-1253-TSZ." A
 5 copy of each check and cover letter, if any, shall be sent simultaneously to: Greg Wingard, Waste
 6 Action Project, P.O. Box 4832, Seattle, WA 98104.

7 9. PSF will pay Waste Action Project's reasonable attorney and expert fees
 8 and costs in the amount of \$24,952.58. Payment will be made within 30 days of the entry of this
 9 decree by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA
 10 98112, attn: Richard A. Smith. This payment is full and complete satisfaction of any claims
 11 Waste Action Project may have under the Clean Water Act for fees and costs.

12 10. A "force majeure event is any event outside the reasonable control of PSF
 13 that causes a delay in performing tasks required by this decree that cannot be cured by due
 14 diligence. Delay in performance of a task required by this decree caused by a force majeure event
 15 is not a failure to comply with the terms of this decree, provided that PSF notifies Waste Action
 16 Project of the event; the steps that PSF will take to perform the task; the projected time that will
 17 be needed to complete the task; and the measures that have been taken or will be taken to prevent
 18 or minimize any impacts to stormwater quality resulting from delay in completing the task.

19 PSF will notify Waste Action Progress of the occurrence of a force majeure event as soon
 20 as reasonably possible but, in any case, no later than fifteen days after the occurrence of the event.
 21 In such event, the time for performance of the task will be extended for a reasonable period of
 22 time following the force majeure event.

23 By way of example and not limitation, force majeure events include

- 24 a. Acts of God, war, insurrection, or civil disturbance;
- 25 b. Earthquakes, landslides, fire, floods;
- 26 c. Actions or inactions of third parties over which defendant has no control;

- d. Unusually adverse weather conditions;
- e. Restraint by court order or order of public authority;
- f. Strikes; and
- g. Litigation, arbitration, or mediation that causes delay.

11. This court retains jurisdiction over this matter. And, while this decree remains in force, this case may be reopened without filing fee so that the parties may apply to the Court for any further order that may be necessary to enforce compliance with this decree or to resolve any dispute regarding the terms or conditions of this decree. In the event of a dispute regarding implementation of, or compliance with, this decree, the parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be held as soon as practical but must be held within 30 days after notice of a request for such a meeting to the other party and its counsel of record. If no resolution is reached at that meeting either party may file a motion with this court to resolve the dispute.

12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent Decree by the parties, Waste Action Project shall serve copies of it upon the Administration of the U.S. EPA and the Attorney General.

13. This Consent Decree takes effect upon entry by the court. It terminates five years and sixty days after that date or when Ecology grants PSF's application for "no exposure" status and cancels PSF's coverage under the permit. Nevertheless, Waste Action Project retains its right to reasonable access to the site as provided in paragraph 7.g. of this Consent Decree for a period of five years and sixty days after the date that the Consent Decree takes effect.

14. Both parties have participated in drafting this decree.

15. This Consent Decree may be modified only upon the approval of the court. If the parties subsequently propose to modify any final consent judgment entered in this case, the parties should so notify the United States, and provide a copy of the proposed modifications, forty-five days before the Court enters any such modifications. See 33 U.S.C. §1365(c)(3).

~~16. If for any reason the court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of either party. The parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of this Consent Decree.~~

¹⁶
~~17~~ Notifications required by this Consent Decree must be in writing. The sending party may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other communication regarding this decree to be valid, it must be delivered to the receiving party at the one or more addresses listed below or to any other address designated by the receiving party in a notice in accordance with this paragraph 17.

if to WAP:

Waste Action Project
P.O. Box 4832
Seattle, WA 98104
email: gwingard@earthlink.net

and to:

Smith & Lowney P.L.L.C.
2317 East John St.
Seattle, WA 98112
email: rasmithwa@igc.org

if to PSF:

PSF Mechanical
9322 14th Avenue South
Seattle, WA 98106
email: drosenfelt@psfmech.com

and to:

Hillis Clark Martin and Peterson PS
1221 Second Ave.; Suite 500
Seattle, WA 98101-2925
email: adr@hcmp.com

A notice or other communication regarding this Consent Decree will be effective when

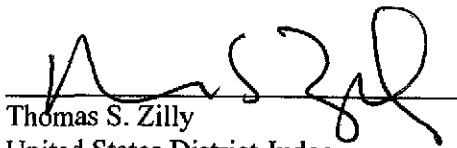
CONSENT DECREE: 10-1253-TSZ - B

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 received unless the notice or other communication is received after 5:00 p.m. on a business day,
 2 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
 3 next business day. A notice or other communication will be deemed to have been received: (a) if
 4 it is delivered in person or sent by registered or certified mail or by nationally recognized
 5 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
 6 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
 7 change in address for which no notice was given, then upon that rejection, refusal, or inability to
 8 deliver.

9 17. The parties' joint motion for entry of consent decree, docket no. 12, is
 10 GRANTED, plaintiff's claims are DISMISSED with prejudice, and the Clerk is directed to
 11 CLOSE this case. P

12 DATED this 24 day of September, 2011.


 13 Thomas S. Zilly
 14 United States District Judge

15 Presented by:

16 HILLIS CLARK MARTIN & PETERSON P.S.

SMITH & LOWNEY

17 By 

George A. Kresovich, WSBA #8017

Amit D. Ranade, WSBA #34878

18 Attorneys for Defendant

19 PSF Mechanical, Inc.

By 

Richard A. Smith, WSBA #21788

Attorneys for Plaintiff

Waste Action Project

20
21
22
23
24
25
26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000

HILLIS CLARK MARTIN & PETERSON P.S.
 1221 Second Avenue, Suite 500
 Seattle, Washington 98101-2925
 Telephone: (206) 623-1745
 Facsimile: (206) 623-7789